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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT 13 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Equal Access and Interconnection )  
Obligations Pertaining to )  
Commercial Mobile Radio Services )

CC Docket No. 94-54  
RM - 8012

To: The Commission

**REPLY COMMENTS OF LARSEN CELLULAR COMMUNICATIONS, INC.**

Larsen Cellular Communications, Inc. ("LCCI"), by counsel, hereby submits these Reply Comments with respect to the Commission's Notice of Proposed Rule Making and Notice of Inquiry, FCC 94-145, released July 1, 1994 ("Notice").

**Statement of Interest**

LCCI is a non-wireline cellular operator providing service to the Florida RSA #7-Hamilton market, a four-county area in northern Florida. LCCI is owned by a group of three investors, one of whom has 14 years' experience in the wireless communications field. LCCI is unaffiliated with any of the regional Bell operating companies ("RBOCs"), McCaw, GTE or any other multi-system cellular operators. The Florida RSA #7 service area is predominantly rural with a population of approximately 100,000. LCCI launched commercial service in July, 1994 with four fully-active cell sites.

LCCI's competitor in the Florida RSA #7 market is Alltel, which has a significantly greater geographic coverage area. In order to compete effectively with Alltel, LCCI must provide higher quality cellular service at a competitive price. To this end, in developing its system, LCCI solicited bids from several major long-

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distance carriers to obtain the most attractive package of long-distance service and cost. After a lengthy process, LCCI selected AT&T over companies such as MCI and Sprint to handle its long-distance service.

As part of this negotiated arrangement, LCCI now provides its customers with a 32-county toll-free calling area comprised of 286 local exchanges. This calling area is larger than the toll-free calling area of both Alltel and Southern Bell (the local exchange carrier ("LEC")) and has the ability to be expanded. Further, this large toll-free calling area allows LCCI to mitigate the effect of Alltel's greater geographic coverage area and its head start in providing service, and facilitates LCCI's ability to compete with Alltel on both service and price. As a result, LCCI is able to attract subscribers and ensure that true competition in the cellular marketplace exists.

As a cellular operator that has realized substantial benefits from conducting negotiations with long-distance carriers to meet competitive demands, LCCI has an interest in ensuring that the equal access provisions proposed in the Notice are not applied to cellular carriers.

### **Discussion**

#### **I. CELLULAR CARRIERS SHOULD BE EXEMPT FROM EQUAL ACCESS OBLIGATIONS.**

For the reasons discussed herein, LCCI urges the Commission to refrain from imposing equal access obligations on cellular carriers. If however, the Commission expands equal access requirements, "small" cellular carriers should be exempt from those

obligations. LCCI believes that this exemption should apply to those cellular licensees that have 10,000 or less subscribers in the aggregate.<sup>1</sup> In order to prevent cellular carriers from circumventing these thresholds, the Commission should impose appropriate ownership attribution limits. As discussed infra, LCCI believes that these thresholds would be consistent with the public interest and will be sufficient to relieve cellular carriers from the administrative and financial burdens equal access would require.<sup>2</sup>

**A. The Competitive Structure of the Cellular Marketplace Dictates Against Imposition of Equal Access Obligations.**

As an initial matter, LCCI questions the Commission's proposal to adopt equal access requirements on any carrier that does not control "bottleneck" facilities, the historical predicate for such regulation. As stated in the Notice, the Commission's proposal to subject all commercial mobile radio service ("CMRS") providers to equal access is a product of the Modified Final Judgment ("MFJ"). See Notice at para. 6. Pursuant to the MFJ, inter alia, the RBOCs are required to afford all cellular subscribers equal access to all long-distance carriers in order to eliminate anti-competitive activities in the long distance market resulting from the LEC's

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<sup>1</sup> In other contexts, the Commission has exempted "small" companies from regulation where such rules would be unduly burdensome. See, e.g., Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993) (relaxed rate burdens on small cable system operators).

<sup>2</sup> See, e.g., Comments of Triad Cellular ("Triad Comments") at pp. 8-9 (requesting waiver or exemption for carriers in rural or low-density areas).

control of bottleneck facilities.<sup>3</sup>

In opposing the view that cellular carriers are effectively bottleneck facilities, numerous commenters presented contrary evidence and further demonstrated that interexchange carriers ("IXCs") have alternative sources of access in the competitive cellular environment.<sup>4</sup> Several commenters cited the concerns of three of the five Commissioners that imposition of equal access requirements on competitive markets, such as cellular, would contravene the Commission's goals to deregulate competitive environments and would impede the development of new wireless services.<sup>5</sup>

LCCI wholeheartedly agrees with these commenters. While the concept of equal access is, at first blush, an attractive-sounding policy, it has no place in an economic environment where competition thrives and will be increasing. Historically, the

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<sup>3</sup> See also Comments of Cellular Telecommunications Industry Association ("CTIA Comments") at p. 5; Comments of Southwestern Bell Corporation ("SWBC Comments") at pp. 6-13; Comments of Palmer Communications Inc. ("Palmer Comments") at pp. 2-4.

<sup>4</sup> See, e.g., SWBC Comments at pp. 19-24 (bottleneck aspect is largely absent in context of cellular); Comments of the Rural Cellular Association ("RCA Comments") at p. 5 (citing Commissioner Barrett's observation that equal access obligations in the context of bottleneck facility market power should not apply to cellular carriers); CTIA Comments at pp. 8-9 (quoting Judge Greene's conclusion that unaffiliated cellular systems and cellular systems owned by RBOCs outside of their local exchange regions do not constitute bottleneck monopolies).

<sup>5</sup> See, e.g., RCA Comments of at pp. 4-5 (quoting Commissioners' statements in Notice questioning the basis for imposing equal access obligations in light of new competitive entrants in wireless marketplace); CTIA Comments at pp. 3-4 (same).

imposition of such artificial marketplace controls are reserved for monopoly situations where a single entity has the ability to control the use of unique and vital facilities.<sup>6</sup> In a duopoly situation, as exists in the Florida RSA #7 market, the use of such barriers actually would thwart competition by eliminating critical service-based and cost-based competitive elements that go directly to the heart of the consumer's choice of cellular carriers. With the imminent deployment of enhanced Specialized Mobile Services ("ESMR") and Personal Communications Services ("PCS"), the CMRS marketplace will become even more competitive.<sup>7</sup> Where a consumer has multiple choices -- based on service quality, scale of services and price -- the Commission should be promoting self-regulation in the marketplace rather than imposing artificial, burdensome and unnecessary regulations that will, in practice, have an anti-competitive effect.<sup>8</sup> The imposition of equal access obligations would be contrary to the policy underlying such restrictions.

**B. Imposition of Equal Access Requirements on Small Cellular Operators Would be Contrary to the Public Interest.**

The imposition of equal access obligations on small cellular operators such as LCCI also would be contrary to the public

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<sup>6</sup> See CTIA Comments at pp. 5-8.

<sup>7</sup> Several commenters opposed the imposition of equal access obligations on these new technologies. See, e.g., Comments of American Mobile Telecommunications Association, Inc. at pp. 6-7 (opposing equal access requirements on ESMR); Comments of American Personal Communications at pp. 3-4 (other CMRS providers need to be able to offer innovative wide-area services).

<sup>8</sup> See CTIA Comments at pp.8-11; Triad Comments at pp. 5-8.

interest. Like many of the commenters, one of the most effective ways for LCCI to compete against an entrenched wireline carrier has been to offer its subscribers an expanded toll-free calling area.<sup>9</sup> When LCCI was developing the Florida RSA #7 market, it solicited proposals from various long-distance carriers. Based on this marketplace-driven competition, LCCI was able to select the calling plan that would allow it to effectively compete with Alltel. Under this plan, LCCI now offers a 32-county toll-free calling area comprised of 286 local exchanges. In exchange, AT&T gains the assurance that all of LCCI's subscribers will be AT&T long-distance customers. This calling plan results in significant savings to its subscribers and allows LCCI to differentiate its service from its competitor. Consumers have a real choice in Florida RSA #7, a choice based on service and price. If LCCI were to be required to institute equal access whereby subscribers were to select their own long-distance carrier, subscribers would ultimately be deprived of the opportunity to have a choice in overall service. Thus, LCCI agrees with those commenters that state that imposing equal access obligations on small cellular carriers would not only hinder their ability to compete, but would

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<sup>9</sup> See, e.g., Triad Comments at p. 8 (Triad offers local calling across five LATAs); RCA Comments at p. 3 (many rural cellular companies offer toll-free wide-area calling); Comments of Florida Cellular RSA Limited Partnership ("Florida Cellular Comments") at p. 2 (toll-free service areas give subscribers lower toll charges than are otherwise available through the LEC); Comments of Pacific Telecom Cellular, Inc. at pp. 3-4 (noting that it offers different size toll-free calling areas); Palmer Comments at p. 5 (LATA wide-area toll-free calling areas).

also decrease the existing level of competition in the IXC marketplace.<sup>10</sup>

Similarly, LCCI concurs with commenters that have demonstrated that imposing equal access requirements would substantially raise long distance rates for subscribers because cellular companies may no longer be financially capable of offering their subscribers the benefits of discounted bulk long-distance rates.<sup>11</sup> Many commenters noted that subscribers have expressed little interest in having the ability to choose a long-distance carrier, but depend heavily on toll-free calling areas.<sup>12</sup> These toll-free areas would be eliminated if equal access obligations were imposed on small carriers such as LCCI.<sup>13</sup> That which is toll-free today would be toll tomorrow.

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<sup>10</sup> See, e.g., Palmer Comments at p. 8 (equal access for cellular carriers would transfer wealth from small cellular providers to large IXCs); Comments of National Telephone Cooperative Association ("NTCA Comments") at p. 5 (current arrangements between cellular providers and IXCs promote competition between IXCs).

<sup>11</sup> See, e.g., Comments of First Cellular at p. 3 (equal access obligations for small cellular carriers would require higher long-distance costs to be passed onto subscribers or would force carrier out of business); Comments of Americell PA-3 Limited Partnership ("Americell Comments") at p. 3 (same); Triad Comments at pp. 6-7 (same); Palmer Comments at p. 5 (same).

<sup>12</sup> See, e.g., CTIA Comments at p. 11; RCA Comments at p. 3; Palmer Comments at p. 6; Florida Cellular Comments at p. 2.

<sup>13</sup> See, e.g., Triad Comments at pp. 7-8 (equal access would prohibit negotiating bulk service arrangements with long-distance carriers and turn local calls into long-distance calls); RCA Comments at p. 3 (equal access would eliminate toll-free wide-area calling which benefits rural customers who tend to travel over greater distances than their metropolitan counterparts).

Subscriber costs also would increase as a result of the additional administrative costs and capital expenses of implementing equal access, and costs associated with educating customers. For instance, carriers may be required to invest in additional hardware or software to integrate multiple long-distance carriers into their system. These costs are particularly burdensome to small carriers, which cannot spread the administrative and capital costs among a large subscriber base and do not have centralized billing or volume discount buying power.<sup>14</sup> As many commenters noted, whatever benefits flow from equal access pale alongside the tremendous costs of implementing equal access, costs which are necessarily passed on to subscribers.<sup>15</sup>

Additionally, subscribers would be inconvenienced by equal access regulation. Instead of a single monthly invoice, in many situations a subscriber would receive two bills, a local cellular bill and a long distance cellular bill. In other situations, small carriers would be forced to raise rates to subsidize the costs of

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<sup>14</sup> See NTCA Comments at pp. 3-4 (equipment upgrades necessary to implement equal access would heavily burden small wireless providers); RCA Comments at pp. 6-8 (equal access would have greatest adverse effect on small cellular carriers); Comments of Saco River Cellular Telephone Company ("Saco Comments") at pp. 3-4 (equal access could be a "logistical and efficiency nightmare" for small carriers without sufficient customer bases to economically support the conversion); Comments of the National Association of Business and Educational Radio, Inc. at p. 6 (citing paragraph 34 of Notice that imposing equal access would increase costs for smaller carriers and thus reduce competition).

<sup>15</sup> See, e.g., Saco Comments at p. 4 n.10 (citing experience of landline affiliate that made substantial investment to implement equal access only to discover customers overwhelmingly chose service previously provided).



sophisticated billing systems needed to put local charges and long distance charges from multiple carriers on the same invoice.<sup>16</sup>

All told, these additional burdens would be too great for some small carriers. LCCI agrees with a large number of commenters that imposing equal access obligations could create severe administrative and financial burdens that would reduce competition and, in extreme cases, could force them to sell to larger carriers.<sup>17</sup> For those small carriers still able to compete, there is a substantial risk that potential investors would be less willing to finance small entrepreneurial operations as a result of the elimination of a primary competitive tool and the attendant loss of subscribers and revenue.<sup>18</sup>

In the future, as suggested by certain commenters, the ability of small cellular carriers to provide toll-free wide-area calling and reduced long distance rates will become even more necessary to the survival of small cellular companies as ESMR and PCS systems offer competitive services.<sup>19</sup> LCCI submits that the Commission

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<sup>16</sup> See, e.g., CTIA Comments at p. 14.

<sup>17</sup> See, e.g., First Cellular Comments at p. 3 (small cellular operators rely more heavily than larger providers on long distance revenues to compete in the wireless marketplace); Americell Comments at p. 3 (same); Triad Comments at pp. 6-7 (same); Palmer Comments at p. 5 (same).

<sup>18</sup> See Second Report and Order, 9 FCC Rcd 1411, 1421 (1994) (promoting regulatory parity to promote investment in mobile services).

<sup>19</sup> See, e.g., NTCA Comments at p. 4; Triad Comments at p. 4 (as more providers enter the marketplace, any market power enjoyed by non-RBOCs will decrease).

would be acting contrary to the public interest if it were to disable a primary competitive component of small cellular carriers.

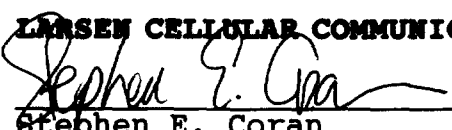
**Conclusion**

Imposing equal access obligations on LCCI and other cellular carriers is a solution in search of a problem. Cellular carriers do not control "bottleneck" facilities, the historical basis for equal access. Moreover, equal access would irrationally extend marketplace regulation to an area where competitive forces are capable of economically regulating. In light of the imminent increase in competition in the mobile and wireless marketplace, imposing equal access obligations would stifle, not promote, competition. Accordingly, at a minimum, small cellular carriers should not be subject to equal access requirements.

Respectfully submitted,

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